No. 87-1605

In The
Supreme Court of the United States

OCTOBER TERM, 1987

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, ET AL.,

Petitioners,

v.

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN RESPONSE TO PETITION FOR CERTIORARI

WILLIAM J. GUSTE, JR.
Attorney General

WINSTON G. DECUIR*
Chief, Civil Division

MARTHA S. HESS
Assistant Attorney General

COUNSEL FOR RESPONDENT, LOUISIANA STATE TREASURER

Louisiana Department of Justice
State Capitol, 22nd Floor
P. O. Box 94005
Capital Station
Baton Rouge, LA 70804
Telephone: 504-342-7013

*Counsel of Record

QUESTION PRESENTED FOR REVIEW

This brief in response to the Petition for Certiorari presents, in addition to the questions set forth in the briefs of co-respondents, the following question for the Court's consideration:

> Whether the State Treasurer's authority to make distributions and transfers of state monies as appropriated by acts of the State Legislature for the State's Minimum Foundation Program, and to distribute to tax recipient bodies state revenue sharing monies, includes the authority to administer the state's public school financing system?

TABLE OF CONTENTS

	Page
Question Presented for Review	i
Table of Contents	ii
Table of Authorities	iii
Opinions Below	2
Constitutional and Statutory Provisions	2
Statement of the Case	2
Summary of Argument	2
Argument	3
Conclusion	5
Appendix	1a

TABLE OF AUTHORITIES

Page

Cases

Poirrier v. St. James Police Jury, 537 F.2d 841 (5th Cir. 1976) 5

Louisiana Constitution

Article IV, Section 9 2,3
Article VII, Section 20 2,4
Article VII, Section 21 2,4

In The
Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-1605

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, LOUISIANA, ET AL.,

Petitioners,

v.

LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondent, Mary Evelyn Parker, Treasurer of the State of Louisiana, respectfully prays that a writ of certiorari not issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered October 22, 1987 (rehearing denied December 28, 1987), which affirmed the judgment of the United States District Court for the Middle District of Louisiana, as said judgments are correct.

OPINIONS BELOW

The citations to the opinions and judgments delivered in the courts below are adequately set forth by Petitioners at pgs. 1 and 2 of their Writ Application.

CONSTITUTIONAL AND STATUTORY PROVISIONS

In addition to the constitutional and statutory provisions cited in the briefs filed on behalf of co-respondents, the following constitutional and statutory provisions relating to the question presented for consideration herein are reproduced at Appendix A, infra, p. la:

Louisiana Constitution of 1974:

Article IV, Section 9

Article VII, Section 20

Article VII, Section 21

STATEMENT OF THE CASE

Mary Evelyn Parker, Treasurer of the State of Louisiana adopts and incorporates by reference herein the statement of facts appearing in the decisions of the District Court (Petitioners' Appendix A at pages 28a-43a) and the Court of Appeal (Petitioners' Appendix B, at pages 1a-27a) and the briefs filed by co-respondents.

SUMMARY OF ARGUMENT

In addition to the summary of argument presented by co-respondents, the following summary is presented.

The constitutional and statutory provisions creating the Department of the Treasury, and prescribing the duties and functions of the State Treasurer, authorize the

State Treasurer to perform her ministerial duties of making distributions and transfers of state revenue sharing monies to the respective parishes who in turn distribute these monies to the eligible recipients of the parish that participate in state revenue sharing. The State Treasurer is also authorized to perform her ministerial duties of distributing the Minimum Foundation Program funds. Therefore, the opinions below granting respondent, Mary Evelyn Parker, Louisiana State Treasurer's motion for summary judgment and dismissing petitioners' claim are correct.

ARGUMENT

In addition to the arguments advanced by co-respondents, which the Louisiana State Treasurer adopts and incorporates by reference herein, the Louisiana State Treasurer argues as follows:

The allegations in petitioners' complaint, as amended, relating to the Treasurer are limited to the statement that the Treasurer makes distributions and transfers of state revenue sharing monies to school boards in the administration of tax exemptions and distribution of state revenue sharing.

The Louisiana Constitution, Article IV, Section 9, sets forth the powers and duties of the Louisiana State Treasurer as follows:

> Section 9. There shall be a Department of the Treasury. The treasurer shall head the department and shall be responsible for the custody, investment, and disbursement of the public funds of the state, except as otherwise provided by this constitution. He shall report annually to

> the governor and to the legislature at least one month before each regular session on the financial condition of the state, and shall have other powers and perform other duties authorized by this constitution or provided by law.

The statutory duties of the State Treasurer do include making distributions and transfers of state revenue sharing monies to the respective parishes who in turn distribute those monies to the eligible recipients of the parish that participate in state revenue sharing. The state treasurer does not administer tax exemptions, as exemptions from ad valorem taxes are constitutional. See Louisiana Constitution of 1974, Article VII, Sections 20 and 21.

There is no legal authority which empowers, authorizes, requires or permits the State Treasurer to either grant and/or enforce tax exemptions from school and/or any other taxes; delegate taxing powers for the support of public schools; or to have such taxing powers delegated to her for the support of public schools in Louisiana.

The powers, duties and authorities incumbent upon the State Treasurer do not include advising the legislature or the legislative auditor with respect to the merits of revenue sharing or the Minimum Foundation Program; nor is the Treasurer charged with administering the state's public school financing system. The Treasurer exercises no independent discretion in making any distributions, as appropriations for elementary and secondary education are made by the Louisiana Legislature in the annual revenue sharing act, which act is neither drafted nor sponsored by the State Treasurer. Further, the funding formula for the State's Minimum Foundation Pro-

gram is adopted by the State Board of Elementary and Secondary Education and approved by the Legislature. The State Treasurer has no legislative role in the adoption of the Minimum Foundation Program Formula.

As noted in the case of *Poirrier v. St. James Police Jury*, 537 F.2d 841 (5th Cir. 1976) "only if the complaint states an independent claim against the parochial bodies can they properly be joined as defendants . . ." The petitioners did not state an independent claim against respondent, Mary Evelyn Parker.

CONCLUSION

The undisputed facts clearly indicate respondent's functions and duties are purely ministerial in nature and do not extend to administering the state's public schools financing system. For these reasons, in addition to the reasons stated by co-respondent, Louisiana Board of Elementary and Secondary Education, it is respectfully submitted that the Petition for Certiorari should be denied.

Respectfully submitted,

WILLIAM J. GUSTE, JR.
Attorney General

WINSTON G. DECUIR*
Chief, Civil Division

MARTHA S. HESS
Assistant Attorney General

COUNSEL FOR
RESPONDENT,
MARY EVELYN PARKER

LOUISIANA DEPARTMENT
OF JUSTICE
P. O. Box 94005-Capitol Station
Baton Rouge, LA 70804-9005
Telephone: 504/342-7013

*Counsel of Record

APPENDIX

TABLE OF CONTENTS

Page

Appendix A—
Constitutional and Statutory Provisions 1a
Louisiana Constitution of 1974:
Article IV, Section 9 ..... 1a
Article VII, Section 20 ..... 1a
Article VII, Section 21 ..... 2a

LOUISIANA CONSTITUTION

ARTICLE IV

* * * * * *

§9. Treasurer; Powers and Duties

Section 9. There shall be a Department of the Treasury. The treasurer shall head the department and shall be responsible for the custody, investment, and disbursement of the public funds of the state, except as otherwise provided by this constitution. He shall report annually to the governor and to the legislature at least one month before each regular session on the financial condition of the state, and shall have other powers and perform other duties authorized by this constitution or provided by law.

ARTICLE VII

* * * * * *

§20. Homestead Exemption

Section 20. (A) Homeowners

(1) The bona fide homestead, consisting of a tract of land or two or more tracts of land with a residence on one tract and a field, pasture, or garden on the other tract or tracts, not exceeding one hundred sixty acres, buildings and appurtenances, whether rural or urban, owned and occupied by any person, shall be exempt from state, parish, and special ad valorem taxes to the extent of seven thousand five hundred dollars of the assessed valuation.

(2) The homestead exemption shall extend to the surviving spouse or minor children of a deceased owner and shall apply when the homestead is occupied as such and title to it is in either husband or wife but not to more than one homestead owned by the husband or wife.

(3) This exemption shall not extend to municipal taxes. However, the exemption shall apply (a) in Orleans Parish, to state, general city, school, levee, and levee district taxes and (b) to any municipal taxes levied for school purposes.

(B) Residential Lessees. Notwithstanding any contrary provision in this constitution, the legislature may provide for tax relief to residential lessees in the form of credits or rebates in order to provide equitable tax relief similar to that granted to homeowners through homestead exemptions.

* * * * * *

§21. Other Property Exemptions

Section 21. In addition to the homestead exemption provided for in Section 20 of the Article, the following property and no other shall be exempt from ad valorem taxation:

(A) Public lands; other public property used for public purposes.

(B)(1) Property owned by a nonprofit corporation or association organized and operated exclusively for religious, dedicated places of burial, charitable, health, welfare, fraternal, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or member thereof and which is declared to be exempt from federal or state income tax;

(2) property of a bona fide labor organization representing its members of affiliates in collective bargaining efforts; and

(3) property of an organization such as a lodge or club

organized for charitable and fraternal purposes and practicing the same, and property of a nonprofit corporation devoted to promoting trade, travel, and commerce, and also property of a trade, business, industry or professional society or association, if that property is owned by a nonprofit corporation or association organized under the laws of this state for such purposes.

None of the property listed in Paragraph (B) shall be exempt if owned, operated, leased, or used for commercial purposes unrelated to the exempt purposes of the corporation or association:

(C)(1) Cash on hand or deposit;

(2) stocks and bonds, except bank stocks, the tax on which shall be paid by the banking institution;

(3) obligations secured by mortgage on property located in Louisiana and the notes or other evidence thereof;

(4) loans by life insurance companies to policyholders, if secured solely by their policies;

(5) the legal reserve of domestic life insurance companies;

(6) loans by a homestead or building and loan association to its members, if secured solely by stock of the association;

(7) debts due for merchandise or other articles of commerce or for services rendered;

(8) obligations of the state or its political subdivisions;

(9) personal property used in the home or on loan in a public place;

(10) irrevocably dedicated places of burial held by individuals for purposes of burial of themselves or members of their families.

(11) agricultural products while owned by the producer, agricultural machinery and other implements used exclusively for agricultural purposes, animals on the farm, and property belonging to an agricultural fair association;

(12) property used for cultural, Mardi Gras carnival, or civil activities and not operated for profit to the owners;

(13) rights-of-way granted to the State Department of Highways;

(14) boats using gasoline as motor fuel;

(15) commercial vessels used for gathering seafood for human consumption; and

(16) ships and oceangoing tugs, towboats, and barges engaged in international trade and domiciled in Louisiana ports. However, this exemption shall not apply to harbor, wharf, shed, and other port dues or to any vessel operated in the coastal trade of the states of the United States.

(17) Materials, boiler fuels, and energy sources used by public utilities to fuel the generation of electricity.

(D)(1) Raw materials, goods, commodities, and articles imported into this state from outside the states of the United States:

(a) so long as the imports remain on the public property of the port authority or docks of

the common carrier where they first entered this state;

(b) so long as the imports (other than minerals and ores of the same kind as any mined or produced in this state and manufactured articles) are held in this state in the original form in bales, sacks, barrels, boxes, cartons, containers, or other original packages, and raw materials held in bulk as all or a part of the new material inventory of manufacturers or processors, solely for manufacturing or processing; or

(c) so long as the imports are held by an importer in any public or private storage in the original form in bales, sacks, barrels, boxes, cartons, containers, or other original packages and agricultural products in bulk. This exemption shall not apply to these imports when held by a retail merchant as part of his stock-in-trade for sale at retail.

(2) Raw materials, goods, commodities, and other articles being held on the public property of a port authority, on docks of any common carrier, or in a warehouse, grain elevator, dock, wharf, or public storage facility in this state for export to a point outside the states of the United States.

(3) Goods, commodities, and personal property in public or private storage while in transit through this state which are moving in interstate commerce through or over the territory of the state or which are in public or private storage within Louisiana, having been shipped from outside Louisiana for storage in transit to a final destination outside Louisiana, whether such destination was specified when transportation began or afterward.

Property described in Paragraph (D), whether or not entitled to exemption, shall be reported to the proper taxing authority on the forms required by law.

(E) Motor vehicles used on the public highways of this state, from state, parish, and special ad valorem taxes. This exemption shall not extend to any general or special tax levied by a municipal governing authority, or by a district created by it, unless the governing authority thereof provides for the exemption by ordinance or resolution.

(F) Notwithstanding any contrary provision of this Section, the State Board of Commerce and Industry or its successor, with the approval of the governor, may enter into contracts for the exemption from ad valorem taxes of a new manufacturing establishment or an addition to an existing manufacturing establishment, on such terms and conditions as the board, with the approval of the governor, deems in the best interest of the state.

The exemption shall be for an initial term of no more than five calendar years, and may be renewed for an additional five years. All property exempted shall be listed on the assessment rolls and submitted to the Louisiana Tax Commission or its successor, but no taxes shall be collected thereon during the period of exemption.

The terms "manufacturing establishment" and "addition" as used herein mean a new plant of establishment or an addition or additions to any existing plant or establishment which engages in the business of working raw materials into wares suitable for use or which gives new shapes, qualities or combinations to matter which already has gone through some artificial process.

(G) Coal or lignite stockpiled in Louisiana for use in Louisiana for industrial or manufacturing purposes or for boiler fuel, gasification, feedstock, or process purposes.

(H) Notwithstanding any contrary provision of this constitution, the State Board of Commerce and Industry or its successor, with the approval of the governor and the local governing authority and in accordance with procedures and conditions provided by law, may enter into contracts granting to a property owner, who proposes the expansion, restoration, improvement, or development of an existing structure or structures in a downtown, historic, or economic development district established by a local governing authority or in accordance with law, the right for five years after completion of the work to pay ad valorem taxes based upon the assessed valuation of the property for the year prior to the commencement of the expansion, restoration, improvement, or development.

B-9045,65,6/88